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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/995,303	11/27/2001	Robert C. Beck	2446	1374

7590 01/03/2007  
Beck & Tysver, P.L.L.C.  
2900 Thomas Avenue S., Suite 100  
Minneapolis, MN 55416

EXAMINER
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DESANTO, MATTHEW F

ART UNIT	PAPER NUMBER
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3763

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	01/03/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

**Office Action Summary**

Application No.

09/995,303

Applicant(s)

BECK, ROBERT C.

Examiner

Matthew F. DeSanto

Art Unit

3763

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 10 October 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 7-9, 18-24 and 27-30 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 7-9, 18-24 and 27-30 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 112***

1. The 112 rejections have been overcome by amendment to clarify that the wall is part of the intervention device.

### ***Claim Objections***

2. Claims 7-9, 18-24, 27-30 are objected to because of the following informalities:  
in claim 7, in the 6<sup>th</sup> paragraph "said wall" has a lack of antecedent basis for this limitation in the claim. The first time the structure of the wall is positively recited, the proper term should be "a wall" instead of "said wall" which is the case in claim 7.
  3. Claim 27 also has a lack of antecedent basis for the "said wall" limitation in the claim. The first time the structure of the wall is positively recited, the proper term should be "a wall" instead of "said wall."
- . Appropriate correction is required.

### ***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. Claims 7-9, 18-24, 27- 30 are rejected under 35 U.S.C. 102(e) as being anticipated by Nash et al. (USPN 6,524,323).

Nash et al. discloses inserting and advancing a sheath having a discharge lumen to a location in the vessel said delivery sheath discharge lumen coupled to a collection vessel, inserting and advancing an interventional device to a treatment location, said interventional device of type having; a therapy balloon for delivering treatment, and a gap for introducing a primary fluid flow in said vessel, said gap located distal of said therapy balloon; injecting fluid out of said gap to promote retrograde flow into said discharge lumen. (Figures 10, 11, 16, 17; Column 26, line 52 – Column 29, line 40 and entire reference)

As to claim 18, wherein said injection is carried out while moving said interventional device in said vessel with respect to said delivery sheath.

As to claim 9, wherein said fluid is injection at a first injection pressure above the blood pressure in the vessel and the injection fluid drops to a second exhaust pressure in said delivery catheter where said exhaust pressure is above said blood pressure, establishing a pressure gradient in said discharge lumen and promoting flow from said gap to said discharge lumen.

As to claim 27, wherein said primary fluid is supplied by a supply syringe chamber and said discharge lumen is coupled to syringe vacuum chamber, and said supply syringe and vacuum syringe are operated together to couple fluid supply with discharge lumen collection.

6. Claims 7-9, 18-24, and 27-30 are rejected under 35 U.S.C. 102(b) as being anticipated by Fischell et al. (USPN 5100425).

Fischell et al. discloses inserting and advancing a sheath having a discharge lumen to a location in the vessel said delivery sheath discharge lumen coupled to a collection vessel, inserting and advancing an interventional device to a treatment location, said interventional device of type having; a therapy balloon for delivering treatment, and a gap for introducing a primary fluid flow in said vessel, said gap located distal of said therapy balloon; injecting fluid out of said gap to promote retrograde flow into said discharge lumen.

Fischell et al. also discloses an infusion means and a discharge means.  
(Column 5, line 62- Column 6, line 15)

### ***Response to Arguments***

7. Applicant's arguments dated 10/10/06 with respect to the claims have been considered but are not persuasive.

8. Applicant argues that the catheter of Nash cannot deploy a stent. The examiner disagrees with the interpretation of Nash. There is no specific structure or specific method step for deploying a stent, which can be found in the claims. Therefore the catheter of Nash, needs only to be capable of carrying a stent, which the examiner determines from reading through the prior art as well as knowing the possibility of medical devices in the medical art.

9. With regards to Fischell et al. the examiner has the same interpretation as Nash. Since no specific structure is claimed or any specific method step, the examiner

interprets that the catheter needs to only be capable of performing the function.

Therefore, the examiner maintains his rejections.

10. In order to expedite prosecution, the examiner suggests positively reciting a step of deploying a stent, so that the 102 Rejections can be overcome.

### ***Conclusion***

11. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Matthew F. DeSanto whose telephone number is 571-272-4957. The examiner can normally be reached on Monday-Friday 9:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nick LUCCHESI can be reached on (571) 272-4977. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 3763

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Matthew DeSanto  
Art Unit 3763  
December 22, 2006



Matthew DeSanto

Art Unit 3763